IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3617 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAKSHIBHAI BHURABHAI BHARWAD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3617 of 1989

MR JABALI SHUKLA for Petitioner No. 1 absent.

MR LR POOJARI, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 13/02/2004

ORAL JUDGEMENT

#. The petitioner challenges the order of the Deputy Collector, Dholka, made on 17th June, 1986 and the

revisional order made by the State Government under Section-35 of the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947, confirming that order by which the sale transaction of the land in question was held to be void under Section-9(1) of the said Act and violative of Section-31 thereof, and it was directed to summarily evict the purchaser.

#. The Deputy Collector, Dholka, on noticing that the land was transferred in favour of the petitioner-purchaser in contravention of the provisions of Section-31 of the said Act initiated proceedings being Consolidation Proceeding Case No. 527 of 1983 and on the basis of the statements of the parties came to a finding that the area of 1 Acre and 8 Gunthas out of the total area of 2 Acres and 16 Gunthas of Block No. 78 of village Ranoda was sold without obtaining any prior approval of the State Government and in contravention of the provisions of Section-31 of the Act. The said transaction was, therefore, declared to be null and void and cancelled. The original owner who had effected the transfer was imposed fine of Rs. 100/- and the arrears of land revenue were ordered to be recovered from him. The present petitioner who was held to be in unauthorised occupation, was ordered to be summarily evicted.

#. Against the said order made under Section-9 of the said Act, the petitioner preferred a revision application under Section-35 of the Act. The revisional authority after merely setting out the facts leading to the transaction came to a finding that the partition of the land was effected without any prior permission and the land admeasuring 1 Acre 8 Gunthas should not have been sold to the petitioner in contravention of the provision of Section-31 of the Act.

#. It was contended on behalf of the State Government that the transaction was in violation of the provisions of the said Act and, therefore, was rightly declared to be null and void and as per the provision of sub-section 3 of Section 9, the petitioner was liable to be summarily evicted for which he cannot make any grievance.

#. It will be noticed from the contentions of the petitioner set out in para-3 of the revisional order that it was, in terms, contended that the land which was purchased being more than 20 Gunthas, the provisions of the said Act did not apply. Apart from the merit of such contention, it is clear that the revisional authority did not deal with it at all. Even as stated in the amended paras-6A & 6B of the petition, the petitioner had raised

the contention to the effect that the petitioner had not produced the record and relevant papers as no such notice was issued by the Deputy Collector, and also the contention that the petitioner was the adjoining plot holder and, therefore, there was no breach of the provisions of the said Act. None of these contentions were considered by the revisional authority.

#. It is clear from the revisional order that the revisional authority has decided the matter without proper application of mind to the nature of the transaction, the contention that the area of the land which was the subject matter of the transaction was more than 20 Gunthas and the provisions of the Act did not apply, and as to in what manner the provisions of Section 31 were violated. In this view of the matter, the impugned revisional order dated 20th July, 1999 cannot be sustained and is hereby set aside with a direction to the revisional authority to reconsider the matter and take a fresh decision in accordance with law after hearing the concerned parties. Rule is made absolute accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

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